

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

ANDREW L. COLBORN,

Plaintiff,

vs.

**NETFLIX, INC.; CHROME MEDIA LLC,
F/K/A SYNTHESIS FILMS, LLC;
LAURA RICCIARDI; AND MOIRA
DEMOS,**

Defendants.

Civil No.: 19-CV-484-PP

SECOND DECLARATION OF MATTHEW E. KELLEY

I, Matthew E. Kelley, under penalty of perjury and subject to 28 U.S.C. § 1746, declare as follows:

1. I am one of the attorneys for the defendants in the above-captioned action. I have personal knowledge of the matters set forth herein. I make this declaration in support of Defendant Netflix, Inc.'s Motion to Dismiss Plaintiff's Second Amended Complaint.
2. Attached hereto as Exhibit 1 is a true and correct copy of a recording of Episode 1 of the first season of the documentary series *Making a Murderer*, the subject of this defamation action. The phrase "Property of Netflix" has been inserted to appear on screen. A USB drive containing this recording will be physically filed with the Office of the Clerk of Court.
3. Attached hereto as Exhibit 2 is a true and correct copy of a recording of Episode 2 of the first season of the documentary series *Making a Murderer*, the subject of this defamation

action. The phrase “Property of Netflix” has been inserted to appear on screen. A USB drive containing this recording will be physically filed with the Office of the Clerk of Court.

4. Attached hereto as Exhibit 3 is a true and correct copy of a recording of Episode 3 of the first season of the documentary series *Making a Murderer*, the subject of this defamation action. The phrase “Property of Netflix” has been inserted to appear on screen. A USB drive containing this recording will be physically filed with the Office of the Clerk of Court.

5. Attached hereto as Exhibit 4 is a true and correct copy of a recording of Episode 4 of the first season of the documentary series *Making a Murderer*, the subject of this defamation action. The phrase “Property of Netflix” has been inserted to appear on screen. A USB drive containing this recording will be physically filed with the Office of the Clerk of Court.

6. Attached hereto as Exhibit 5 is a true and correct copy of a recording of Episode 5 of the first season of the documentary series *Making a Murderer*, the subject of this defamation action. The phrase “Property of Netflix” has been inserted to appear on screen. A USB drive containing this recording will be physically filed with the Office of the Clerk of Court.

7. Attached hereto as Exhibit 6 is a true and correct copy of a recording of Episode 6 of the first season of the documentary series *Making a Murderer*, the subject of this defamation action. The phrase “Property of Netflix” has been inserted to appear on screen. A USB drive containing this recording will be physically filed with the Office of the Clerk of Court.

8. Attached hereto as Exhibit 7 is a true and correct copy of a recording of Episode 7 of the first season of the documentary series *Making a Murderer*, the subject of this defamation action. The phrase “Property of Netflix” has been inserted to appear on screen. A USB drive containing this recording will be physically filed with the Office of the Clerk of Court.

9. Attached hereto as Exhibit 8 is a true and correct copy of a recording of Episode 8 of the first season of the documentary series *Making a Murderer*, the subject of this defamation action. The phrase “Property of Netflix” has been inserted to appear on screen. A USB drive containing this recording will be physically filed with the Office of the Clerk of Court.

10. Attached hereto as Exhibit 9 is a true and correct copy of a recording of Episode 9 of the first season of the documentary series *Making a Murderer*, the subject of this defamation action. The phrase “Property of Netflix” has been inserted to appear on screen. A USB drive containing this recording will be physically filed with the Office of the Clerk of Court.

11. Attached hereto as Exhibit 10 is a true and correct copy of a recording of Episode 10 of the first season of the documentary series *Making a Murderer*, the subject of this defamation action. The phrase “Property of Netflix” has been inserted to appear on screen. A USB drive containing this recording will be physically filed with the Office of the Clerk of Court.

12. Attached hereto as Exhibit 11 is a true and correct copy of the document captioned as “Correspondence/Memorandum,” with the subject listed as “Avery Review,” from Wisconsin Attorney General Peggy A. Lautenschlager to Manitowoc County District Attorney Mark Rohrer, dated December 17, 2003. This document sets forth the findings and conclusions of the Attorney General’s investigation of the wrongful conviction of Steven Avery in 1985. It was introduced as an exhibit in depositions of Manitowoc County officials in Steven Avery’s civil rights lawsuit, *Avery v. Manitowoc County*, No. 04-C-986 (E.D. Wis.).

13. Attached hereto as Exhibit 12 is a true and correct copy of the transcript of the deposition of Mark Rohrer, Part 2, on September 22, 2005, in *Avery v. Manitowoc County*, No. 04-C-986 (E.D. Wis.).

14. Attached hereto as Exhibit 13 is a true and correct copy of the transcript of the deposition of Michael Griesbach on September 22, 2005, in *Avery v. Manitowoc County*, No. 04-C-986 (E.D. Wis.). The highlighting appears on the copy of the transcript in Defendants' possession.

15. Attached hereto as Exhibit 14 is a true and correct copy of the transcript of the deposition of Andrew Colborn on October 13, 2005, in *Avery v. Manitowoc County*, No. 04-C-986 (E.D. Wis.).

16. Attached hereto as Exhibit 15 is a true and correct copy of the statement of Andrew Colborn dated September 12, 2003, regarding the telephone call that Colborn received as a corrections officer at the Manitowoc County Jail circa 1995. It was introduced as an exhibit in depositions of Colborn and other Manitowoc County officials in Steven Avery's civil rights lawsuit, *Avery v. Manitowoc County*, No. 04-C-986 (E.D. Wis.). Netflix has redacted personal identifying information from the exhibit.

17. Attached hereto as Exhibit 16 is a true and correct copy of the transcript of the deposition of Manitowoc County Sheriff Kenneth Petersen on October 13, 2005, in *Avery v. Manitowoc County*, No. 04-C-986 (E.D. Wis.).

18. Attached hereto as Exhibit 17 is a true and correct copy of the transcript of the deposition of Manitowoc County Sheriff's Lt. James Lenk on October 11, 2005, in *Avery v. Manitowoc County*, No. 04-C-986 (E.D. Wis.).

19. Attached hereto as Exhibit 18 is a true and correct copy of a memorandum from Douglass K. Jones to M. Rohrer regarding "Steven Avery file case # unknown," dated September 18, 2003, on the letterhead of the Manitowoc County District Attorney. In this memorandum Jones, an Assistant District Attorney, describes a conversation he had with former

Manitowoc County Sheriff's Department Chief Investigator Eugene Kusche regarding Kusche's conversation with Andrew Colborn regarding the call Colborn received at the Manitowoc County Jail circa 1995. It was introduced as an exhibit in depositions of Kusche and other Manitowoc County officials in Steven Avery's civil rights lawsuit, *Avery v. Manitowoc County*, No. 04-C-986 (E.D. Wis.).

20. Attached hereto as Exhibit 19 is a true and correct copy of the transcript of the deposition of former Manitowoc County Sheriff's Department Chief Investigator Eugene Kusche on October 26, 2005, in *Avery v. Manitowoc County*, No. 04-C-986 (E.D. Wis.). The highlighting appears on the copy of the transcript in Defendants' possession.

21. Attached hereto as Exhibit 20 is a true and correct copy of excerpts from the book by plaintiff's counsel, Michael Griesbach, THE INNOCENT KILLER (2014).

22. Attached hereto as Exhibit 21 is a true and correct copy of a Case Activity Report for Case No. GC-13280 dated September 30, 2003, by Wisconsin Division of Criminal Investigation Special Agent Debra Strauss. The report's "Activity" is listed as "Records Examination: Safe Documents," and it describes Sheriff Kenneth Petersen allowing Strauss to review documents stored in the safe in Petersen's office, including the September 12, 2003 statement by Andrew Colborn attached hereto as Exhibit 15.

23. Attached hereto as Exhibit 22 is a true and correct copy of a search warrant and supporting affidavit dated November 5, 2005, from the Circuit Court for Manitowoc County. The warrant authorizes searches of the homes of Steven Avery and Barb Janda and the 40-acre premises of Avery Auto Salvage. This is the first search warrant approved in the Halbach investigation and was drafted by Plaintiff's counsel Michael Griesbach, who was then a Manitowoc County Assistant District Attorney.

24. Attached hereto as Exhibit 23 is a true and correct copy of the Decision and Order on Defendant's Motion to Suppress Evidence Based on Multiple Entries Under the November 5, 2005 Search Warrant, filed on December 12, 2006 in *State v. Avery*, No. 05 CF 381 in the Circuit Court for Manitowoc County.

25. Attached hereto as Exhibit 24 is a true and correct copy of the Decision and Order on State's Motion to Exclude Blood Vial Evidence, filed on January 30, 2007 in *State v. Avery*, No. 05 CF 381 in the Circuit Court for Manitowoc County.

26. Attached hereto as Exhibit 25 is a true and correct copy of the Memorandum and Order granting defendants' motion to dismiss in *Fairfax v. CBS Broad. Inc.*, No. 1:19-cv-11176 (E.D. Va. Feb. 11, 2020).

27. Attached hereto as Exhibit 26 is a true and correct copy of excerpts from the book by plaintiff's counsel, Michael Griesbach, INDEFENSIBLE (2016).

28. Attached hereto as Exhibit 27 is a true and correct copy of the Decision and Order on State's Motion to Allow the Introduction of Nine Items of Other Acts Evidence, filed on September 25, 2006, in *State v. Avery*, No. 05 CF 381 in the Circuit Court for Manitowoc County.

29. Attached hereto as Exhibit 28 is a true and correct copy of a portion of the transcript of arguments and testimony on February 12, 2007, Day 1 of the trial in *State v. Avery*, No. 05 CF 381 in the Circuit Court for Manitowoc County. This exhibit includes the opening statement of defense counsel Dean Strang and the testimony of witness Michael Halbach, a brother of the victim Teresa Halbach.

30. Attached hereto as Exhibit 29 is a true and correct copy of the transcript of proceedings on February 20, 2007, Day 7 of the trial in *State v. Avery*, No. 05 CF 381 in the

Circuit Court for Manitowoc County. This transcript includes testimony from Sgt. William Tyson of the Calumet County Sheriff's Department, Sgt. Andrew Colborn of the Manitowoc County Sheriff's Department and the Plaintiff in this action, and Lt. James Lenk of the Manitowoc County Sheriff's Department.

31. Attached hereto as Exhibit 30 is a true and correct copy of portions of the transcript of testimony on February 21, 2007, Day 8 of the trial in *State v. Avery*, No. 05 CF 381 in the Circuit Court for Manitowoc County. This transcript includes the continuation of the testimony of Lt. Lenk and the testimony of Detective David Remiker of the Manitowoc County Sheriff's Department.

32. Attached hereto as Exhibit 31 is a true and correct copy of portions of the transcript of testimony on February 22, 2007, Day 9 of the trial in *State v. Avery*, No. 05 CF 381 in the Circuit Court for Manitowoc County. This transcript includes the testimony of Deputy Daniel Kucharski of the Calumet County Sheriff's Department and Special Investigator Gary Steier of the Calumet County Sheriff's Department.

33. Attached hereto as Exhibit 32 is a true and correct copy of portions of the transcript of testimony on February 23, 2007, Day 10 of the trial in *State v. Avery*, No. 05 CF 381 in the Circuit Court for Manitowoc County. This transcript includes the testimony of Wisconsin state crime lab forensic scientist Sherry Culhane.

34. Attached hereto as Exhibit 33 is a true and correct copy of portions of the transcript of testimony on February 28, 2007, Day 13 of the trial in *State v. Avery*, No. 05 CF 381 in the Circuit Court for Manitowoc County. This transcript includes the testimony on direct examination of Special Agent Tom Sturdivant of the state Division of Criminal Investigation and forensic anthropologist Dr. Leslie Eisenberg.

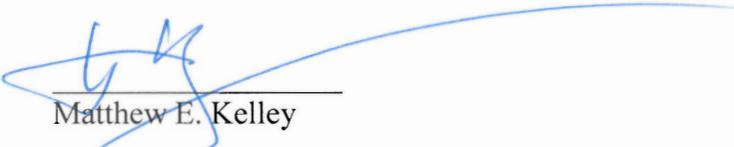
35. Attached hereto as Exhibit 34 is a true and correct copy of a portion of the transcript of closing arguments on March 14, 2007, Day 23 of the trial in *State v. Avery*, No. 05 CF 381 in the Circuit Court for Manitowoc County. This transcript includes the closing argument of defense counsel Jerome Buting.

36. Attached hereto as Exhibit 35 is a true and correct copy of portions of the transcript of closing arguments on March 15, 2007, Day 24 of the trial in *State v. Avery*, No. 05 CF 381 in the Circuit Court for Manitowoc County. This transcript includes the closing argument of defense counsel Dean Strang and the rebuttal closing argument of Special Prosecutor Kenneth Kratz.

37. Attached hereto as Exhibit 36 is a true and correct copy of the transcript of proceedings on March 18, 2007, Day 27 of the trial in *State v. Avery*, No. 05 CF 381 in the Circuit Court for Manitowoc County. This transcript includes the reading of the jury's verdict.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 2, 2020



Matthew E. Kelley